

Planning & Zoning Commission Meeting
Minutes of November 2, 2011
1st Floor North Conference Room - City Hall

Present: Chairman Mark C. Brooks, Vice-Chairman Nathaniel Cannady, Kristy Carter, Jeremy Goldstein, Jane Gianvito Mathews, Holly P. Shriner and Paul Smith

Absent: None

Pre-Meeting - 4:30 p.m.

The Commission (1) discussed several aspects of items on the agenda, clarifying some elements; and (2) preliminary nominated Mark Brooks to the Chairman and Nathaniel Cannady to be Vice-Chairman for the next year.

Regular Meeting - 5:00 p.m.

Interim Chairman Brooks called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

Administrative

Ms. Shriner nominated Mark C. Brooks as Chairman and Nathaniel Cannady as Vice-Chairman. This motion was seconded by Mr. Goldstein and carried unanimously on a 7-0 vote.

On behalf of the entire Commission. Chairman Brooks was pleased to welcome new Commissioners Kristy Carter and Jane Mathews as new Planning & Zoning Commission members. Mr. Goldstein was welcomed at the September 7 meeting.

Chairman Brooks was honored to recognize former Planning & Zoning Commission member Darryl Hart (noting Jerome Jones was recognized at the September 7, 2011, meeting). Ms. Weeks was unable to attend this meeting; however, was presented with a resolution of appreciation by Planning & Development Director Judy Daniel. Chairman Brooks thanked Mr. Hart for his services to the citizens of Asheville. Ms. Daniel read the resolution of appreciation to Mr. Hart.

Ms. Shriner moved to approve the minutes of the September 7, 2011, meeting noting a typographical error. This motion was seconded by Mr. Smith and carried unanimously by a 7-0 vote.

Mr. Smith moved to continue the conditional zoning request for the project identified as White Oak Grove Apartments to December 7, 2011. This motion was seconded by Mr. Ms. Mathews and carried unanimously by a 7-0 vote.

Agenda Items

- (1) Review of the Conditional Zoning request for the project identified as White Oak Grove Apartments located at 275 and 281 Hazel Mill Road to rezone from RM-8 Residential Multi-Family Medium Density District to RM-16/Conditional Zoning Residential Multi-Family High Density District/Conditional Zoning for the development of 108 apartment units housed in three buildings. The owner is White Oak Grove, LLC and the contact is Bob Grasso. The properties are identified in the Buncombe County tax records as PINs 9638.39-9131 and 6188.**

Mr. Smith moved to continue the conditional zoning request for the project identified as White Oak Grove Apartments to December 7, 2011. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.

- (2) **Review of the Conditional Zoning request for the project identified as Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot addition to an existing 400,000 square foot manufacturing facility. The owners are Minkles, LLC, and the City of Asheville and the contact is Tripp Anderson. The properties are identified in the Buncombe County tax records as PIN 9643.71-7581 and a portion of PIN 9643.52-1970.**

Urban Planner Julia Fields oriented the Commission to the site location and said that the applicant, Electrolux, currently has a warehouse/distribution facility located at 1310 Fanning Bridge Road in Asheville and is seeking conditional zoning approval to allow for a significant expansion. The property is currently zoned Airport and Industrial and is owned by Minkles, LLC (existing operation) and the City of Asheville (this property will be purchased or leased from the City). The applicant is seeking rezoning to Industrial CZ (Conditional Zoning). The proposed expansion to the existing 400,000 square foot facility is for an additional 304,000 square feet.

The current facility has a single entrance for employee and truck traffic off of Fanning Bridge Road. The plans call for the demolition of the current parking and loading configuration and the creation of a new drive off of Airport Road for trucks entering a new loading dock area. The employee parking with continued access from Fanning Bridge Road will be reconstructed to provide for 260 spaces.

Due to the width of the rights-of-way of Airport and Fanning Bridge Roads, a modification would need to be granted to allow for some of the street trees to be located farther than 20 feet from the edge of the pavement.

The Technical Review Committee reviewed this proposal on October 17, 2011, and recommended approval with conditions. At the meeting the applicant stated that they are still considering whether to lease or purchase the property. The Committee is requiring that the issue of whether or not the property will be leased or purchased be resolved by the time this application is considered by the Asheville City Council as this impacts building safety standards. The applicant has submitted revised plans to staff addressing many of the other issues.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

- 1. That the proposed use or development of the land will not materially endanger the public health or safety.**

The applicant is expanding an existing building to provide for improved function at their facility. The existing building has been in operation for many years now and is in a location with immediate access to major transportation corridors. It is surrounded by other major traffic generating uses.

- 2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**

There will be loss of some of the existing wooded areas to the north and east of the proposed expansion due to needed grading; however, significant building impact and other landscaping will be planted as part of the project.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The use of the land is not changing; the operation is expanding to facilitate improved processes. The property is surrounded by other major traffic generating uses.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The development is in an area with other very substantial buildings and operations.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

The proposed development supports the depiction in the City's comprehensive plan of the Asheville Regional Airport area as a regional node. It also supports the strategy of having Asheville's planning and zoning processes facilitate sustained and positive economic development. It supports the Council goal of supporting a strong local economy by continuing to implement sustainable growth and development.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

There are no additional truck loading docks proposed in the expansion. The development is located just off of a major interstate highway and along a four lane state highway. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, and police protection.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Although this is a major expansion, the intensity of the use will change little from existing operations.

Pros:

- Expansion of an existing major distribution facility supports many City goals concerning economic development.
- Provides for an improved traffic pattern for both employee and truck traffic.

Con: None noted.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable and recommends approval of the conditional zoning request with the modification to the location of some of the street trees as requested and with the conditions set forth in the TRC report and the standard conditions. No one has contacted Planning Department staff concerning this issue.

There was discussion surround the issue of the property being leased or purchased.

Mr. David Aiton, project architect, explained they are trying to keep 250 jobs in Asheville with the expansion. Even though the land deal is complicated, he was confident that it would be worked out. He said they would like to begin construction in March of 2012.

Mr. Clay Mooney responded to Ms. Mathews when she questioned the large amount of standing water in the existing retention pond.

A representative of Electrolux also spoke about keeping families in the area. He noted that they do not see any new jobs at this time. He explained their need for a bigger footprint on that property and hoped the Commissioners would grant their conditional zoning request.

Chairman Brooks opened the public hearing at 5:18 p.m. and when no one spoke, he then closed it at 5:18 p.m.

Based on the above findings and the analysis provided in the report, Vice-Chairman Cannady moved to recommend approval of the project identified as Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot addition to an existing 400,000 square foot manufacturing facility, with the modification to the location of some of the street trees, subject to the conditions recommended by City staff and the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) This project will undergo final review by the TRC prior to the issuance of any site development permits; (3) All site lighting must comply with the City's Lighting Ordinance, Section 7-11-10, of the Unified Development Ordinance. A detailed lighting plan illustrating compliance with the ordinance will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (4) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (5) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (6) That the issue regarding whether or not the property will be leased or purchased be resolved by the time this application is heard before City Council. This motion was seconded by Mr. Smith and carried unanimously by a 7-0 vote.

(3) Review of the Level III site plan for the project identified as The Aventine, located at Long Shoals Road and Clayton Road, for a 312 unit apartment complex. The property owner is Biltmore Farms, LLC and the contact is Will Buie. The property is identified in the Buncombe County Tax records as PIN 9634.99-6488.

Urban Planner Nate Pennington oriented the Commission to the site location and said that the applicant is requesting site plan approval for one parcel zoned CI (Commercial Industrial) for the development of 312 apartment units and associated accessory buildings in accordance with Section 7-5-9(a) of the Unified Development Ordinance (UDO) which designates review for any residential development containing more than 50 individual units. Level III projects are reviewed as a conditional use in the Commercial Industrial district.

The subject property consists of one parcel comprising 61.74 acres according to Buncombe County tax records and is located in the City's extra-territorial jurisdiction (ETJ). The property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange, although without any immediate proximity to the current city limits which terminate at the French Broad River. If approved, the subject property would be subdivided into four (4) tracts and the project would be built entirely on tract 3. Tract three is proposed to be 35.86 acres and would be developed at a total density of 8.7 dwelling units per acre. There are currently no plans for the development of the remaining parcels. The maximum density permitted in the CI zoning district is 16 units per acre.

The following list provides a breakdown of the proposed development:

- ? 7 apartment buildings would house the 312 apartment units
- ? 3 – 4 story configurations
- ? 152 – one bedroom units

- ? 115 – two bedroom units
- ? 45 – three bedroom units
- ? Clubhouse, leasing area, pool/cabana area, restrooms, mail kiosk located in vicinity of building #7
- ? 3 freestanding garage buildings located throughout the site and a maintenance/garage/car wash structure located in the vicinity of building #6

The site is heavily wooded with the exception of a large Progress Energy transmission line that splits the property in a northwest direction almost parallel to Clayton Road. Old soil roadbeds are located throughout the site. The property contains documented wetland areas, a stream, tributaries and regulated floodplain along the French Broad River.

The apartment project is proposed to be built in one phase with subsequent development of outparcels to occur in the future. Flournoy Development Company would retain ownership of tract 3 containing the apartments while the remaining outparcels would remain (for now) in the ownership of Biltmore Farms Inc.

Access to the site is proposed to be provided from both Long Shoals Road and Clayton Road via a series of meandering driveways that weave through the site.

According to the site plan, 490 parking spaces are provided. This amount of parking is well within the minimum/maximum parking threshold and is inclusive of required ADA spaces. Twenty-six bicycle parking spaces are provided and this number is in compliance of the required 5% bicycle parking standard. Parking is dispersed throughout the site – located behind building #'s 1 – 6 and in the front and rear of building #7.

The site is heavily wooded and large areas of the property will remain as such in order to meet open space and tree save standards. Street trees will be required along the entire frontage of Long Shoals Road and Clayton Road. Building impact and retaining wall landscaping are dispersed throughout the site. Parking lot landscaping has been provided in applicable areas and no modification requests to landscaping standards are being sought.

The open space requirement for this type of development is 15% of the total site size; a total of 5.38 acres for this site. The site plan illustrates that more than adequate open space has been reserved to meet this requirement.

Sidewalk construction (or fee-in-lieu) is required along all street frontages along Long Shoals Road and Clayton Road. The City traffic engineer has indicated that a fee-in-lieu of option might be more ideal (future sidewalk maintenance issues) given the fact that this project is located in ETJ.

Large scale developments are required to provide an urban level of service to meet the needs of their residential and/or commercial tenants. While staff recommended that the applicant consider voluntary annexation to meet these needs, the applicant has elected to contract for services both privately (solid waste/recycling, etc.) and with Buncombe County (police and fire protection).

This proposal was recommended for approval with conditions by the Technical Review Committee on October 17, 2011.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the UDO, and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The subject property is appropriately zoned for the proposed residential development. The development was designed to preserve the existing riparian buffer along the French Broad River and development is being clustered outside of the regulated floodplain. The development is fairly isolated from Long Shoals Road and Clayton Road and is bounded by a large electrical transmission line and the French Broad River. The only immediate neighbor is Biltmore Baptist Church to the north and is separated from the church by a very large parking lot.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding uses and adjacent transportation corridors.
4. **That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
As noted in Finding #2, the development is setback from adjacent road frontages and is located in the vicinity of a very large church. The development is clustered in a way that keeps it isolated from residential development across Long Shoals Road. The proposed density is almost one-half of the permitted residential density for the CI zoning district.
5. **That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are only partially aligned with the City's goals and objectives for "Green and Sustainable," but not for "Affordable" as noted in the Compliance with Comprehensive Plan and other Adopted Plans section. The most notable missing element, given past expectations from the Council, is that a project of this magnitude (312 residential units) provides no affordable units.
6. **That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange. The nearest bus stop is approximately two miles from the subject site along Hendersonville Road. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.
7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
A traffic impact study has determined that the proposed use will not cause undue traffic congestion or create a traffic hazard along the existing street infra-structure. The existing street infra-structure, which was recently upgraded, is sufficient to handle the additional

traffic from the proposed use. The location of the access points must provide adequate intersection and stopping sight distances required by NCDOT and/or City policies and guidelines. Since both access points are along state-maintained streets, the North Carolina Department of Transportation has final approval of the appropriate driveway permits.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Higher density development furthers the goals and objectives of the comprehensive plan.
- Clustered development provides for the preservation of dense vegetation along the French Broad River.

Cons:

- Applicant does not propose to reserve any units for affordable housing.
- Dense development is not in the vicinity of public transportation and will be fully auto dependent.

Staff recommends that the Planning and Zoning Commission approve this request, with a few areas of concern. While the application meets the technical requirements of the underlying zoning district and other UDO standards, and it complies to a certain extent with goals for added density and green building standards, and the market rate housing it proposes generally meets current levels of affordability for "workforce" level housing; this project offers no affordable housing and thus falls short of compliance with that fundamental long range policy objective that has been preferred by the City Council in recent years.

Vice-Chairman Cannady felt that since this project is not really in an urban environment and is located in the ETJ, he questioned whether they should be required to meet the City's adopted goals, especially in terms of providing affordable housing.

In response to Ms. Shriner, Mr. Pennington said that all the open space requirements are inclusive in the one parcel.

In response to Ms. Mathews regarding what criteria was used in the past for projects to meet the sustainability thresholds, Mr. Pennington cited that many projects included Energy Star certification and some included Healthy Built Homes standards.

Ms. Mathews pointed out that the only sustainability item was irrigation and there was a caveat to that.

In response to Mr. Goldstein, Mr. Pennington said that regarding density they are requesting almost half of what is allowed.

Mr. Will Buie, representing Lapsley & Associates, said that their project is fully funded and ready to move forward. They are not asking for any modifications and the density is half of what is allowed. He pointed out that the open space provided is almost double and the tree save area is approximately 4 acres greater than what is required. This property will contain almost 2,000 linear feet of riparian buffer along the French Broad River. They are prepared to meet all the TRC conditions. He felt they meet the seven conditional use standards. He explained that regarding sustainability and green building, the Flournoy Development Company has developed a green policy which they attempt to incorporate into all of their communities. Flournoy has their own construction company and their own management company, so they integrate green building throughout the entire course of the project. As far as specific standards, they are not in a position to say whether or not they will build to Energy Star or Healthy Built home standards. To provide affordable housing places an additional restriction on their cost and their income and it makes the

project very difficult from a viability standpoint. However, he said that all of the apartments will meet the workforce standards.

In response to Ms. Mathews, Mr. Buie said that workforce rents range from \$1,100/month for a 1-bedroom apartment to \$1,700/month for a 4-bedroom apartment. Rents vary depending on the number of bedrooms.

Mr. Ryan Foster, Vice President of Flournoy Development Company, said that they have continued to build apartments during the economic downturn. Regarding the affordable housing component, it will be a problem because they already have an investor and they bought into a model based on certain rent they pulled from the market area. They simply cannot do affordable housing and make the project viable. If they included an affordable housing component they would have to try to find another investor. They do, however, feel that their rent will meet the workforce housing standards, and possibly below those standards. Their goal is to start construction in early April of 2012.

In response to Ms. Mathews about the two high retaining walls, Mr. Buie described the proposed retaining walls. The walls will be as high as 40 feet; however, the walls will be terraced – 20 foot wall, terrace and then another 20 foot wall. Their goal will be to preserve the adjacent vegetation, in addition to the additional landscaping required. He also noted that the lower part of the site is primarily the tree save area. The open space is primarily located around the clubhouse, pool area and the general development itself. They meet the open space requirement without any of the areas in the floodplain/floodway. Mr. Pennington noted that when this goes for final TRC review, they will particularly pay attention to that point.

In response to Ms. Mathews, Mr. Buie said that recycling and garbage would be located in the same location.

Ms. Mathews, who is also a member of the Sustainable Advisory Committee on Energy & the Environment, said that she appreciated the fact that there is consideration given to sustainable policies, but a lot of the items are very general and there are no commitments, noting in Asheville some are even mandated. She also appreciated the recycling of waste during construction, but other than that, the project does not contain a lot of sustainability. She was troubled that they could not even commit to an Energy Star certification which is a relatively easy task to achieve.

When Mr. Foster said that they could install Energy Start appliances, Ms. Mathews explained that from a sustainability standpoint, the City is trying to encourage the actual buildings be constructed sustainably, beyond the minimum of the building code.

When Ms. Mathews expressed concern about the site access on Clayton Road due to a hill, Mr. Buie said that they will be looking at the details of that design. In addition, they will be working with the N.C. Dept. of Transportation on the driveway permit review process. He believed they do meet the site distance requirements at that location.

Ms. Tuch responded to Ms. Carter regarding the growth plan for the whole area, noting that the project is on an urban corridor and the development seems auto dependent.

In response to Mr. Goldstein, using a map Mr. Buie showed the Commission where the portion of land would be dedicated for a future bus shelter.

There was further discussion regarding the developer would be willing to consider 1% or perhaps 3 one-bedroom units to be affordable; however, Mr. Foster said that they have not broached the subject with the investor because they are afraid they will back out. Mr. Foster noted that they already have an additional cost of extending a sewer line.

In response to Ms. Shriner, Assistant Planning & Development Director Shannon Tuch said that the City does not have a fee-in-lieu of policy regarding affordable housing. The Council has established an Affordable Housing Advisory Committee and that will be a subject that Planning staff will ask the Committee to look at.

Mr. Smith agreed that affordable housing is needed in Asheville; however, he felt that it would be challenging to provide affordable housing on this property, due to the expensive nature of the property itself, grading, retaining walls, etc.

In response to Vice-Chairman Cannady, Ms. Tuch said that beyond the technical standards, the developer is required to support the City's adopted goals and plans.

At 6:06 p.m., Chairman Brooks opened the public hearing.

Ms. Francis Briggs, adjacent property owner, questioned if they will build more commercial on the property, noting it would not fit into the community.

Mr. Tim Sadler felt this is the City's chance to develop the property according to their approved plans, and the developer should address sustainability and affordable housing.

Mr. Jay Marlow, Realtor and appraiser, noted it wouldn't take many units to meet the affordable housing standards. Affordable housing is needed in Asheville and if the developer wants to build in Asheville, he should meet Asheville standards.

At 6:15 p.m., Chairman Brooks closed the public hearing.

Chairman Brooks felt the purpose of the Commission is to evaluate projects based on their own merits and make judgment decisions in the gray areas. He noted there are a lot of positives to the project, including green space along the river. We all support affordable housing but most of the time when we review affordable housing projects they are in a real urban environment and on a major traffic corridor. This project is in the ETJ and not on a major transportation corridor. He didn't think people who will live in the units will ride the bus – noting its 2 miles to the closest bus stop. He didn't think it was a practical site for an affordable housing component. He felt the Commission could force a percentage of affordable housing on the developer, but the reality is that this project is not in the best site for affordable housing. He felt the positives of the project outweigh meeting the affordable housing objective on that site. He strongly suggested the developer work on their sustainability commitments prior to it going before City Council.

In response to Chairman Brooks, Mr. Buie said that the preservation of the mature trees in front of the walls will hide the retaining walls.

Ms. Mathews stated that Biltmore Park is an urban area and it is directly across from this site. Even though the area may not have bus service at this time, it is an urban area. She felt the project did not meet the City's goals regarding sustainability or affordable housing. Condition No. 5 is not met at all.

Mr. Goldstein felt that since the developer is only building 50% of the density allowed is sustainable in itself in terms of leaving all of the other land untouched. He felt that if the developer was building a higher density on the site, then it would be easier to include affordability. If that is the factor in whether the project is developed or not, he would support the project moving forward as is.

Ms. Shriner was impressed with the density as well and agreed with Mr. Goldstein in that it speaks to sustainability. Their open space and tree save is also impressive. They have indicated that they will meet workforce standards. She was pleased that the project was fully

funded and construction could begin in April, considering the economy. She did not think the project was presently in a very urban area. She was, to some degree, concerned about the lack of affordable units and would like to see some sustainable measures; however, she not concerned enough that the project should not move forward. She hoped that in the near future we could have a fee-in-lieu policy for affordable housing units.

Ms. Carter said that the City is only asking for a small percentage of affordable units (perhaps 3) and if the rent is what the you said it will be, then it is a concern that \$300 a month would make your investor back out of the project. If it is the Commission's role to say whether the project meets City Council's goals, then she could not say that - unless the developer goes back and firms up sustainability and/or affordable unit issues. She felt certain that development will continue down Long Shoals Road.

Vice-Chairman Cannady noted that this project is in the ETJ and was concerned that those people do not get to vote but they must abide by the City's standards.

Based on the above findings and the analysis provided in the report, Vice-Chairman Cannady moved to recommend approval of the Level III site plan for the project identified as The Aventine, located at Long Shoals Road and Clayton Road, for a 312 unit apartment complex, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A minor subdivision application must be submitted for the creation of the outparcel lots before zoning permit issuance. This motion was seconded by Mr. Smith and carried unanimously by a 6-1 vote, with Ms. Mathews voting "no."

At 6:38 p.m., Chairman Brooks announced a short recess.

- (4) Preliminary plat review for a modification request to reduce the required width of an alternative access drive for the project identified as Mullen Subdivision (2 lots) located on Dysart Street. The property owners are D. Matt and Elizabeth G. Mullen and the contact is Elizabeth Mullen. The property is identified in the Buncombe County Tax Records as PIN 9638.06-4003.**

Urban Planner Nate Pennington oriented the Commission to the site location and said that this is a subdivision modification review for the alternative access subdivision located at the end of Dysart Street.

The property is zoned RS-8 and abuts Dysart Street at the end of the public maintenance. The applicant is proposing a two-lot subdivision by way of the alternative access standards in Unified Development Ordinance, Section 7-11-2 (j)(2)(b). The lots will be 10,048 square feet (Lot 3) and 16,322 square feet (Lot 4). Our Code requires you have to be along a street frontage to development the lot. The applicant is seeking a modification to the standard that requires a 20-foot paved surface; a 16-foot paved surface is proposed as a continuation of what currently exists on Dysart Street.

He pointed out that if the applicant wanted to extend the 16-foot paved surface to 20-feet, they would not have had to come to the Commission for the modification. The only reason they

are before the Commission is because they wanted to straighten the road out and make it consistent with the existing 16-foot road.

Using a map, Mr. Pennington said that from the end of the existing 16-foot paved surface will be the City's responsibility and the new proposed 16-foot paved surface will be privately maintained.

In response to Chairman Brooks, Mr. Pennington said that there is a small piece that will have to be brought back into the right-of-way.

Ms. Elizabeth Mullen, applicant, explained her proposed two-lot subdivision.

In response to Ms. Mullen, Mr. Pennington explained that the only correction of the street is the small encroachment portion which needs to be brought back into the right-of-way. There is plenty of room for the correction and there is no reason to go into the Russell's property (which is on the other side of the encroachment portion).

At 6:58 p.m., Chairman Brooks opened the public hearing.

Mr. Dennis Russell explained that he and his wife own rental property across the street from the end of the paved road. He stated several the following concerns (1) the 16-foot new portion should be an extension of Dyson Street and maintained by the City - if the new portion is maintained by the City, then they can park in front of their house and if it remains a private drive, then they are in jeopardy of blocking the entrance to the private portion; (2) they don't want to be prevented from having a driveway entrance at the corner of their property near the new extension; (3) they do not a through street from Dyson Street to Blue Ridge Avenue; and (4) they have concerns about water run-off flooding Dyson Street.

A resident at 19 Dyson Street felt that there should be no access from Dyson Street to Blue Ridge Avenue. He felt the street should not be extended beyond the existing pavement. He explained how heavy construction trucks have destroyed Dyson Street and any construction vehicles for the new structure should enter and exit from Blue Ridge Avenue and not Dyson Street.

After staff responded to various questions raised by the Commission in response to Mr. Russell's concerns, Assistant Planning & Development Director Shannon Tuch reminded the Commission that the only issue before the Commission is whether or not to approve the modification for a 16-foot paved surface extension.

In response to a resident's concern, Ms. Mullen said that she will not build the new 16-foot paved road until after the construction of the new house is complete.

At 7:16 p.m., Chairman Brooks closed the public hearing.

Based on the above findings and the analysis provided in the report, Vice-Chairman Cannady moved to recommend approval of the modification request to reduce the required width of an alternative access drive for the project identified as Mullen Subdivision (2 lots) located on Dysart Street with the conditions identified by City staff. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.

(5) Ordinance amending Chapter 7 of the Code of Ordinances to update, clarify and expand various sign code standards

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance amending Chapter 7 of the Code of Ordinance to update, clarify and expand various sign code standards.

She said that over the last several months, interest in a collection of sign code amendments has grown and been intermittently discussed amongst staff and the Planning & Economic Development Committee. The purpose of this amendment is to clarify and expand sign code standards to better address existing needs and practices.

The City of Asheville has had sign regulations since 1977 and has gone through a variety of amendments over the years with perhaps the most significant amendment occurring in 1989 when the standards were overhauled and new allowances established with significant stakeholder input – this is what was commonly referred to as the “sign code”. In 1997 the zoning code, sign code, and other separate codes were incorporated into the current Unified Development Ordinance (UDO) where the basic sign allowances were generally maintained. At this time, however, the sign standards were also expanded to include a number of new categories of signage not previously considered. This provided more flexibility and options for affected properties and for some unique signage needs.

During this same time period (late 80’s and early 90’s) there was much attention given to signs and sign standards with equally fervent opinions expressed from both business owners who wanted more and larger signs to provide better business identification, and from citizens who were fighting the proliferation of sign “clutter” that they believed was becoming increasingly common and objectionable from an aesthetic, wayfinding, and safety perspectives. In response, a large and diverse stakeholder group was formed and met regularly for approximately a year as standards were negotiated and revised. Every effort was made to be fair and reasonable, and to satisfy the number of divergent concerns. The critical work of this group continues to influence the city’s application and development of sign standards with an emphasis on providing opportunity for legitimate business needs while controlling intrusions and unnecessary distractions that could cause safety hazards for drivers and pedestrians.

Our experience reflects that the sign code standards and their interpretation and application receive the greatest level of resistance from some sectors of the business community over any other section in the zoning code, despite the extent of the options and the moderate allowances offered. And enforcement of this code also receives a very strong scrutiny from the public and business competitors. In conversation with senior staffers, concern over sign standards goes back as far as one can recall and consistently gets raised periodically, year after year. And the pendulum seems to swing from year to year from concern that there is inadequate enforcement to concern that the standards are overly restrictive. Additionally, when speaking with other zoning enforcement personnel across the region, and seeing the content of sessions at national conferences, the tension with sign code standards appears to be a fairly universal phenomenon and is notorious for the challenges involved with enforcement.

Asheville has attempted to overcome some of this tension by convening stakeholder groups to identify the fair and reasonable “middle ground” and an informal benchmarking study conducted three years ago confirmed Asheville’s position as neither the most restrictive nor the most lenient of cities in the southeast. Nevertheless, Asheville City staff continues to experience complaints on a regular basis (on both sides of the debate) for numerous reasons.

Eventually, a new Comprehensive Plan will be developed and the UDO will likely require some significant updating as part of implementing that new plan. There has been growing interest in simpler form-based codes for certain sections of the ordinance, and the sign code is one section that translates very well into a form-based version. Until that time however, there is a series of relatively minor amendments that can be considered.

As with all ordinances, it is challenging to anticipate all development possibilities and most standards are designed for the most common situations. For those that are atypical, a variance process is provided and relief from the sign standards can be considered when there exists a physical hardship to the site. The variance process has been an effective tool and is a

relatively simple and expedient application process. This same variance process has also been very effective in revealing common scenarios where consideration of new standards to address recurring situations may be of benefit. This, combined with the identification of common permitting challenges, frequently applied interpretations, and news and information from the planning profession and sign industry, has helped establish a small list of sign code amendments that are designed to bring clarity to the existing standards, while also providing new opportunity for difficult but not entirely uncommon situations.

While Ms. Tuch reviewed the following amendments to Article XIII, she responded to various questions/comments from the Commission, some being, but are not limited to: is there a definition for temporary sign material; clarification of the A-frame sign amendment as it relates to businesses; and concern that a property owner would go to the expense of putting up a sign in the City's right-of-way but in the future having to remove it due to the City's need for that property:

Article XIII Amendments

Campaign signs. Clarify that the 30 days begins prior to the first day of polling, which will begin with early voting.

LED signs. Allow digital and LED changeable copy messages to change once every 4 hours.

Second tier development signage. Remove second tier allowances and replace with an option that would allow a land-locked property tenant signage on an adjacent free-standing, multi-tenant sign. Requires cooperation from adjacent property owner. Intent is to maintain sign allowances and not increase the number of structures, but allow existing sign structures to be shared.

Signs on vehicles. Clarify standards so that vehicles with signage parked on site must be parked in a proper, striped space and shall not be parked in aisles, or grassy medians, etc. and cannot block another businesses sign. Vehicles with signage stored off-site must be parked to minimize visibility. Add a second clarifier to prohibit mobile billboards.

Temporary sign material. Allow a temporary material to be used for a permanent sign for a period of 6 months to one year – after which its replacement with a permanent material would be treated as a face change.

A-frame signs. Clarify standards to permit one A-frame sign per public entrance when entrances are located on separate street frontages.

Housekeeping. 1) Add Urban Place and Airport to the table for commercial signage. 2) Fix allowance (60 s.f.) for NCD, CBI, NB, URD and UP.

Signs in City rights-of-way. Allow signs to be located within a city right-of-way when:

- ? The right-of-way is greater than 75 feet
- ? The City Traffic Engineer has determined that no traffic concern is created
- ? Sign location is a minimum of 25' from edge of pavement
- ? No variances to sign allowances are permitted

After review of the amendments, it was the consensus of the Commission to have Ms. Tuch wordsmith the amendment (1) that you are allowed one A-frame sign for each of the public entrances, for the business that it advertises, when the entrances are

located on separate street frontages; and (2) regarding the requirement for an encroachment agreement for signs in the City's rights-of-way.

Ms. Tuch then reviewed the following amendments to Article XIV which will be reviewed separately at the December meeting. She stressed additional research will be conducted and the following amendments are subject to change. She responded to various questions/comments from the Commissioners mainly related to identification located on the portable on demand (POD) storage containers. Regarding the PODs, they currently do not require permits for these containers and they have had some enforcement issues because they do not require permits. Staff feels they need to make it clear that the PODs are there for the purpose of storage, not for the purpose of free advertising. The proposal is to look at a permit process for the containers. It's treating the signs on vehicles similarly. This amendment would not apply to PODs that are covered under the building permit process.

Article XIV Amendments

The following amendments will be reviewed separately as part of an upcoming amendment to Temporary Uses; however, these amendments will impact signage for these events/uses as described below. Additional research is being conducted and these descriptions/thresholds are subject to change.

Temporary events. Create separate allowances for events not lasting more than 3-4 days.

- ? Less than 100 people: 32 s.f. total
- ? 100+ people (at any given time): 64 s.f. total
- ? *1,000+ people per day: 300 s.f. total (may be distributed amongst multiple venues). No limit on off-site directional signage. Other decorative, non-animated attention getting devices may also be considered by special approval of the Planning Director and Building Safety Director.

[*Additional research is being conducted to help determine appropriate thresholds – these numbers may change]

Identification located on portable on demand (POD) storage containers.

Treat PODs with signage similarly to the signs on vehicles – when visible from a public right-of-way, the POD should be positioned to minimize visibility or, when not practical, have the sign covered.

Temporary signage for legal non-residential uses Allow legal, non-residential properties (schools, churches, etc.) to support temporary events and allow a limited amount of signage for those events.

This proposal supports goals for job growth and community development by expanding options for businesses while also researching new formats for the UDO.

Pros:

- ? Provides greater flexibility for difficult but not uncommon signage situations.
- ? Provides improved clarity to existing sign standards.

Cons:

- ? Adding new standards may contribute to the overall complexity of the code.
- ? Increasing opportunities could increase the total number of signs in the environment.

City staff recommends approval of the wording amendments to Article XIII.

Ms. Tuch noted that she failed to include an amendment to Article XIII regarding digital billboards. If acceptable to the Commission, she will provide some research and analysis about digital boards and bring it forward to the Commission at the same time she comes forward with the Article XIV amendments.

Chairman Brooks opened the public hearing at 7:56 p.m.

Mr. George Morosani, owner of several storage centers in Asheville, said that even though he understood that the POD issue is not being considered at this meeting, he noted he has worked with the Director of Planning & Development on this issue for over a year. He is a taxpayer and finds that he has competitors that don't even have a business in the City. Every month or two these businesses put a self-storage box in various locations in the City with a big phone number on the side of the container. As a property owner he can only put so much signage around his property. He has witnessed these portable billboards (PODs) on a major highway for two months - leave, and then come back again. They are not permitted. He suggested (1) that they be treated as a portable sign and be covered; and (2) establish a permit procedure and have them stick the permit on the side of their box. He noted he had no problem with the storage boxes in residential areas. Most cities allow a temporary storage bin for 3-4 days. He is trying to address to storage bins in one location for 2-6 months at a time.

Chairman Brooks closed the public hearing at 8:03 p.m.

Based on the above findings and the analysis provided in the report, Ms. Carter moved to recommend approval of an amendment to Chapter 7 of the Code of Ordinances concerning clarifications to and expansion of the current sign code standards, with the condition that City staff clarify the two amendments regarding A-frame signs being for the entrance for the business that it advertises and an encroachment agreements be required for signs in the City's rights-of-way. This motion was seconded by Ms. Mathews and carried unanimously by a 7-0 vote.

It was the consensus of the Commission to have staff research and provide analysis regarding digital billboards and include a possible amendment to Article XIII when the amendments to Article XIV are presented to the Commission.

Other Business

Chairman Brooks announced the next meeting on December 7, 2011, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

Adjournment

At 8:05 p.m., Ms. Shriner moved to adjourn the meeting. This motion was seconded by Vice-Chairman Cannady and carried unanimously by 7-0 vote.